**WBM Building Maintenance, Inc. *and* Laborers' International Union of North America, AFL–CIO**

**WBM Building Maintenance, Inc./WBM Industries, Inc. *and* Construction, Production & Maintenance Workers Local Union 1210, Laborers' International Union of North America, AFL–CIO.** Cases 12–CA–14489 (formerly Case 5–CA–21415) and 12–CA–14369

February 28, 1992

## DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

Upon unfair labor practice charges filed by the Laborers' International Union of North America, AFL–CIO (Laborers Union) and Construction, Production & Maintenance Workers Local Union 1210, Laborers' International Union of North America, AFL–CIO (Local 1210), the General Counsel of the National Labor Relations Board issued an amended consolidated complaint on June 28, 1991, against WBM Building Maintenance, Inc./WBM Industries, Inc., alleged to be a single employer and hereafter referred to as the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charges and the amended consolidated complaint,[1] the Respondent has failed to file an answer.

On December 5, 1991, the General Counsel filed a motion to transfer proceedings to the National Labor Relations Board and for default judgment. On December 12, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

### Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The amended consolidated complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Default Judgment disclose that counsel for the General Counsel, by letter dated July 17, 1991, notified the Respondent that unless an answer was received by July 29, 1991, a Motion for Summary Judgment would be filed.[2]

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

## FINDINGS OF FACT

### I. JURISDICTION

About October 12, 1990, WBM Industries, Inc. was established by WBM Building Maintenance, Inc. as a subordinate instrument to and a disguised continuation of WBM Building Maintenance, Inc. At all times since October 12, 1990, WBM Building Maintenance, Inc. and WBM Industries, Inc. have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy affecting employees of the operations; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as a single-integrated business enterprise. By virtue of the above-described operations, WBM Building Maintenance, Inc. and WBM Industries, Inc., constitute a single business enterprise, alter egos of one another, and a single employer within the meaning of the Act.

The Respondent, Texas corporations, with offices and places of business in Fort Lee, Virginia, Valdosta, Georgia, and other locations in the United States, has been engaged as a contractor in providing custodial and housekeeping services for hospitals. During the calendar year 1989, a representative period, the Respondent, in the course and conduct of its business operations, performed services valued in excess of $50,000 for the United States Government at Kenner Army Hospital, Fort Lee, Virginia, Moody Air Force Base, Valdosta, Georgia, and at Brooke Army Medical Center in San Antonio, Texas. We find that these operations have a substantial impact on the national defense of the United States. We find further that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of

[1] A respondent's failure or refusal to accept service of documents cannot "serve to defeat the purposes of the Act." *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

[2] Counsel for the General Counsel additionally sent the Respondent a letter on August 12, 1991, notifying the Respondent that unless an answer was received by August 22, 1991, a Motion for Summary Judgment would be filed.

the Act and that the Laborers Union and Local 1210 are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Fort Lee Bargaining Unit*

The following employees of the Respondent, called the Fort Lee Unit, constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All non-supervisory maintenance employees employed by by Respondent at its Fort Lee, VA. facility, excluding office clerical employees, managerial employees, guards, professional employees and supervisors as defined in the Act.

Since on or about August 1, 1988, and at all times material, Local 1210, by virtue of Section 9(a) of the Act, has been the designated exclusive collective-bargaining representative of the Fort Lee Unit for purposes of collective bargaining with respect to rates of pay, wages, hours, and other terms and conditions of employment, and since that date has been recognized as the representative by the Respondent. Recognition has been embodied in a collective-bargaining agreement to which the Respondent, Local 1210 and Laborers Union are parties, which is effective by its terms for the period February 23, 1989, to February 22, 1992.

The Respondent has failed to continue in full force and effect all the terms and conditions of employment contained in the collective-bargaining agreement, by implementing the following changes in terms and conditions of employment of employees in the Fort Lee Unit:

> (a) Since on or about April 1, 1990, the Respondent has failed to contribute to the Laborers Union National Health and Welfare Fund on behalf of employees in the Fort Lee Unit, as provided in Article XXI of the agreement;
>
> (b) Since on or about May 1, 1990, the Respondent has failed to make contributions to the Laborers International Union of North America National (Industrial) Pension Fund on behalf of its employees in the Fort Lee Unit, as provided in Article XXII of the agreement;
>
> (c) Since on or about February 20, 1990, the Respondent has failed to make contributions to the Laborers Union Employers Service Contract Education and Training Trust Fund on behalf of its employees in the Fort Lee Unit, as provided in Article XXV of the agreement;
>
> (d) Since on or about June 1, 1990, the Respondent has refused to remit to the Laborers Union or Local 1210 the dues deducted from paychecks of employees in the Fort Lee Unit, as provided in Article IV Section 1 of the agreement.

The terms and conditions of the agreement which the Respondent has failed to continue in full force and effect are terms and conditions of employment of employees in the Fort Lee Unit, and are mandatory subjects of collective bargaining. The Respondent engaged in the above-described conduct without prior notice to Local 1210 or the Laborers Union and without having afforded either Union an opportunity to negotiate and bargain as the exclusive representative of employees in the Fort Lee Unit. We find that by the above-described conduct the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the Unions and has thereby engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

B. *The Valdosta Bargaining Unit*

The following employees of the Respondent, called the Valdosta Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All non-supervisory maintenance employees employed by Respondent at its Valdosta, GA. facility, excluding office clerical employees, managerial employees, guards, professional employees and supervisors as defined in the Act.

Since on or about October 1, 1988, and at all times material, Local 1210, by virtue of Section 9(a) of the Act, has been the designated exclusive collective-bargaining representative of the Valdosta Unit for purposes of collective bargaining with respect to rates of pay, wages, hours, and other terms and conditions of employment, and since December 9, 1988, has been recognized as the representative by the Respondent. Recognition has been embodied in successive collective-bargaining agreements to which the Respondent, Local 1210 and the Laborers Union are parties, the most recent of which is effective by its terms for the period February 23, 1989, to February 22, 1992.

The Respondent has failed to continue in full force and effect all the terms and conditions of employment contained in the above-described collective-bargaining agreement, by implementing the following changes in terms and conditions of employment of employees in the Valdosta Unit:

> (a) Since on or about February 1, 1990, the Respondent has failed to make contributions to

the Laborers Union National Health and Welfare Fund on behalf of employees in the Valdosta Unit, as provided in Article XXI of the agreement;

(b) Since on or about May 1, 1990, the Respondent has failed to make contributions to the Laborers International Union of North America National (Industrial) Pension Fund on behalf of its employees in the Valdosta Unit, as provided in Article XXII of the agreement;

(c) Since on or about February 20, 1990, the Respondent has failed to make contributions to the Laborers Union Employers Service Contract Education and Training Trust Fund on behalf of its employees in the Valdosta Unit, as provided in Article XXV of the agreement;

(d) Since on or about June 1, 1990, the Respondent has refused to remit to the Laborers Union or Local 1210 the dues deducted from paychecks of employees in the Valdosta Unit, as provided in Article IV Section 1 of the agreement.

The terms and conditions of the agreement which the Respondent has failed to continue in full force and effect are terms and conditions of employment of employees in the Valdosta Unit and are mandatory subjects of collective bargaining. The Respondent engaged in the above-described conduct without prior notice to Local 1210 or the Laborers Union and without having afforded either Union an opportunity to negotiate and bargain as the exclusive representative of employees in the unit. In addition, about November 1, 1990, Local 1210 requested, both orally and in writing, that the Respondent meet with it at a mutually agreeable time and place for the purpose of negotiating a collective-bargaining agreement for the employees in the Valdosta Unit, and since on or about December 1, 1990, the Respondent has failed and refused to meet and bargain with Local 1210 as the exclusive collective-bargaining representative of its employees in the Valdosta Unit. We find that by the above-described conduct the Respondent has failed and refused and is failing and refusing to bargain collectively and in good faith with the Unions and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) of the Act.

## CONCLUSIONS OF LAW

By failing and refusing to continue in full force and effect all the terms of the parties' collective-bargaining agreement by failing to make contractually required benefit fund contributions, by refusing to remit to the Union dues deducted from the paychecks of unit employees, and by failing and refusing to meet and bargain with Local 1210 as the exclusive collective-bargaining representative of employees in the Valdosta Unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(5) and (1) and 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to reimburse the Unions' benefit funds for those contractually required contributions the Respondent has unlawfully failed to make on behalf of unit employees, as provided in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). We shall further order the Respondent to make whole unit employees for any expenses incurred as a result of its failure to provide the contractually required level of benefits, as provided in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We shall additionally order the Respondent to forward to the Unions the dues that it unlawfully refused to remit to the Unions, with interest in the manner set forth in *New Horizons for the Retarded*, supra. We shall further order the Respondent to meet, upon request, and bargain with Local 1210 as the exclusive collective-bargaining representative of its employees at the Valdosta facility.

## ORDER

The National Labor Relations Board orders that the Respondent, WBM Building Maintenance, Inc./WBM Industries, Inc., Fort Lee, Virginia, and Valdosta, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to make contractually required contributions on behalf of unit employees to the Laborers Union National Health and Welfare Fund, the Laborers International Union of North America National (Industrial) Pension Fund, and the Laborers Union Employers Service Contract Education and Training Fund.

(b) Failing and refusing to remit to the Union authorized dues deducted from the paychecks of unit employees.

(c) Failing and refusing to meet and bargain with Local 1210 as the exclusive collective-bargaining representative of unit employees at the Valdosta, Georgia facility.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make all contractually required contributions on behalf of unit employees to the Laborers Union National Health and Welfare Fund, the Laborers International Union of North America National (Industrial) Pension Fund, and the Laborers Union Employers Service Contract Education and Training Fund, in the manner set forth in the remedy section of this decision.

(b) Make whole employees in the following appropriate Fort Lee and Valdosta units for any expenses incurred as a result of the Respondent's failure to make required benefit fund contributions, in the manner set forth in the remedy section of this decision:

> All non-supervisory maintenance employees employed by Respondent at its Fort Lee, VA. facilities, excluding office clerical employees, managerial employees, guards, professional employees and supervisors as defined in the Act.
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> All non-supervisory maintenance employees employed by Respondent at its Valdosta, GA. facilities, excluding office clerical employees, managerial employees, guards, professional employees and supervisors as defined in the Act.

(c) Forward to the Union all authorized dues it deducted from the paychecks of unit employees and failed to remit to the Union, in the manner set forth in the remedy section of this decision.

(d) On request, meet and bargain with Local 1210 as the exclusive collective-bargaining representative of unit employees at the Valdosta, Georgia facility.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(f) Post at its facilities in Fort Lee, Virginia, and Valdosta, Georgia, the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail and refuse to make contractually required contributions to the Laborers Union National Health and Welfare Fund, the Laborers International Union of North America National (Industrial) Pension Fund, and the Laborers Union Employers Service Contract Education and Training Fund.

WE WILL NOT fail and refuse to remit to the Union authorized dues deducted from the paychecks of unit employees.

WE WILL NOT fail and refuse to, on request, meet and bargain with Construction, Production & Maintenance Workers Local Union 1210 (Local 1210) as the exclusive collective-bargaining representative of unit employees at our Valdosta, Georgia facility.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make all contractually required contributions on behalf of unit employees to the Laborers Union National Health and Welfare Fund, the

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Laborers International Union of North America National (Industrial) Pension Fund, and the Laborers' Union Employers Service Contract Education and Training Fund.

WE WILL make whole Fort Lee unit and Valdosta unit employees for any expenses incurred as a result of our failure to make required benefit fund contributions, with interest. The units are:

> All non-supervisory maintenance employees employed by Respondent at its Fort Lee, VA. facilities, excluding office clerical employees, managerial employees, guards, professional employees and supervisors as defined in the Act.

> All non-supervisory maintenance employees employed by Respondent at its Valdosta, GA. facilities, excluding office clerical employees, managerial employees, guards, professional employees and supervisors as defined in the Act.

WE WILL forward to the Union all authorized dues we deducted from the paychecks of unit employees and failed to remit to the Union.

WE WILL on request meet and bargain with Local 1210 as the exclusive collective-bargaining representative of unit employees at our Valdosta, Georgia facility.

WBM BUILDING MAINTENANCE, INC./WBM INDUSTRIES, INC.